: 6750-01-P]

FEDERAL TRADE COMMISSION

[File No. 211 0174]

JAB Consumer Partners/Ethos Veterinary Health; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: "JAB/Ethos Veterinary Health; File No. 211 0174" on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mike Barnett (202-326-2362), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Website at this web address: *https://www.ftc.gov/news-events/commission-actions*.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "JAB/Ethos Veterinary Health; File No. 211 0174" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID-19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write "JAB/Ethos Veterinary Health; File No. 211 0174" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov*, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov* – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

Analysis of Agreement Containing Consent Orders to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with JAB Consumer Partners SCA SICAR ("JAB"), the owner of Compassion-First Pet Hospitals and NVA Parent Inc. (collectively, "Compassion-First/NVA"), and VIPW, LLC and Ethos Veterinary Partners LLC, owners of Ethos Veterinary Health LLC ("Ethos"), which is designed to remedy the anticompetitive effects that would result from Compassion First/NVA's proposed acquisition of Ethos.

Pursuant to a Stock Purchase Agreement and Plan of Merger dated August 13, 2021, Compassion-First/NVA proposes to acquire Ethos for approximately $1.65 billion (the "Acquisition"). Both parties provide specialty and emergency veterinary services in clinics located in the United States. The Commission alleges in its Complaint that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the markets for certain specialty and emergency veterinary services in four different localities in the United States. The Consent Agreement, which contains the proposed Decision and Order ("D&O") and Order to Maintain Assets, will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Acquisition. Specifically, under the terms of the D&O, Compassion-First/NVA is required to divest clinics to United Veterinary Care, LLC ("UVC") and Veritas Veterinary Partners ("Veritas"), operators of specialty and emergency veterinary clinics elsewhere in the country. In order to protect robust future competition in markets trending towards increased consolidation, including due to acquisitions by JAB that may or may not be reportable under the Hart-Scott-Rodino Premerger Notification Act ("HSR"), the D&O provides for (1) a statewide prior approval by the parties in California, Colorado, Virginia, Maryland, and throughout the District of Columbia for acquisitions proximate to existing and future Compassion-First/NVA emergency and specialty clinics, and (2) a nationwide prior notice for proposed acquisitions proximate to existing and future Compassion-First/NVA emergency and specialty clinics.

The Consent Agreement with the proposed D&O and the Order to Maintain Assets has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the D&O as well as any comments received and decide whether it should withdraw the D&O, modify it, or make it final. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

II. The Relevant Markets and Market Structures

The relevant lines of commerce in which to analyze the Acquisition are individual specialty veterinary services and emergency veterinary services. Specialty veterinary services are required in cases where a general practitioner veterinarian does not have the expertise or equipment necessary to treat the sick or injured animal. General practitioner veterinarians commonly refer such cases to specialists – typically doctors of veterinary medicine who are board-certified in the relevant specialty. Individual veterinary specialties include internal medicine, neurology, medical oncology, critical care, ophthalmology, surgery, radiology, cardiology, dermatology, and anesthesiology. Emergency veterinary services are those used in acute situations where a general practice veterinarian is not available or, in some cases, not trained or equipped to treat the patient's medical problem.

The relevant areas for the provision of specialty and emergency veterinary services are local in nature, delineated by the distance and time that pet owners travel to receive treatment. The distance and time customers travel for specialty services are highly dependent on local factors, such as the proximity of a clinic offering the required specialty service, appointment availability, population density, demographics, traffic patterns, or specific local geographic impediments like large bodies of water or other geographic impediments.

The Acquisition is likely to result in consumer harm in markets for the provision of the following services in the following localities:

a. medical oncology veterinary specialty services in and around Richmond, Virginia;

b. medical oncology veterinary specialty services in and around the Washington, DC Metro Area;

c. internal medicine, neurology, medical oncology, critical care, surgery, radiology, cardiology, dermatology, and anesthesiology veterinary specialty services and emergency veterinary services in and around Denver, Colorado; and

d. internal medicine, neurology, medical oncology, critical care, ophthalmology, and surgery veterinary specialty services and emergency veterinary services in and around San Francisco, California.

All of these relevant markets are currently highly concentrated, and the Acquisition would substantially increase concentration in each market. In one case, the combined firm would be the only provider following the transaction. In other markets, the combined firm would be one of only a few alternatives for consumers.

There has been a growing trend towards consolidation in the emergency and specialty veterinary services markets across the United States in recent years by large chains including Respondent Compassion-First/NVA. Respondent Compassion-First/NVA itself has grown principally through large acquisitions that were reported to federal antitrust authorities pursuant to the Hart-Scott-Rodino Act. The Commission determined that it had reason to believe that previous reportable transactions were illegal as originally structured and therefore ordered divestitures in various local relevant markets to remedy the anticompetitive effects that would have occurred absent each remedy.

To protect robust future competition in markets trending towards increased consolidation, each most recent Commission order has included prior approval and/or notice provisions for acquisitions proximate to existing and future Compassion-First/NVA emergency and specialty clinics. The prior notice provision from the 2020 Compassion-First/NVA order has already had a beneficial effect in preventing acquisitions that may have substantially lessened competition. NVA filed a prior notice for a subsequent acquisition following the issuance of that order, and, after FTC staff raised concern about potential anticompetitive concerns about the deal, NVA abandoned the acquisition.

III. Entry

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. For *de novo* entrants, obtaining financing to build a new specialty or emergency veterinary facility and acquiring or leasing necessary equipment can be expensive and time consuming. The investment is risky for specialists that do not have established practices and bases of referrals in the area. Further, to become a licensed veterinary specialist requires extensive education and training, significantly beyond that required to become a general practitioner veterinarian. Consequently, veterinary specialists are often in short supply, and recruiting them to move to a new area frequently takes more than two years, making timely expansion by existing specialty clinics particularly difficult.

IV. Effects of the Acquisition

The Acquisition, if consummated, may substantially lessen competition in each of the relevant markets by eliminating close, head-to-head competition between Compassion-First/NVA and Ethos for the provision of specialty and emergency veterinary services. In one market, the Acquisition will result in a merger to monopoly. The Acquisition increases the likelihood that Compassion-First/NVA will unilaterally exercise market power and cause customers to pay higher prices for, or receive lower quality, relevant services.

V. The Proposed Decision and Order

The proposed D&O remedies the Acquisition's anticompetitive effects in each market by requiring the parties to divest five facilities[1] to UVC and Veritas. The divestitures will preserve competition between the divested clinics and the combined firm's clinics. UVC and Veritas are qualified acquirers of the divested assets with experience acquiring, integrating, and operating specialty and emergency veterinary clinics. Neither UVC nor Veritas currently operate or have plans to operate any specialty and emergency veterinary clinics in the relevant markets.

The D&O requires the divestiture of all regulatory permits and approvals, confidential business information, including customer information, and other assets

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[1] The divested clinics include (1) The Oncology Service-Richmond in Richmond, Virginia (divested to UVC); (2) The Oncology Service-Springfield and The Oncology Service-Leesburg in the DC Metro area (divested to UVC); (3) Wheat Ridge Animal Hospital in the Denver, Colorado area (divested to Veritas); and (4) Pet Emergency + Specialty Center of Marin near San Francisco (divested to Veritas). The divestitures include all expansion or relocation efforts related to these facilities. The divestitures include all assets, including equipment and intellectual property, necessary to compete effectively in each relevant market.

associated with providing specialty and emergency veterinary care at the divested clinics. To ensure the divestiture is successful, the D&O also requires Compassion-First/NVA and Ethos to secure all third-party consents, assignments, releases, and waivers necessary to conduct business at the divested clinics.

The D&O also requires Compassion-First/NVA and Ethos to provide reasonable financial incentives to certain employees to encourage them to stay in their current positions. Such incentives may include guaranteed retention bonuses for specialty veterinarians at divestiture clinics. These incentives will encourage veterinarians to continue working at the divestiture clinics, which will ensure that UVC and Veritas are able to continue operating the clinics in a competitive manner.

Finally, the D&O contains other provisions to ensure that the divestitures are successful. For example, Compassion-First/NVA will be required to provide transitional services for a period of up to one year to ensure UVC and Veritas continue to operate the divested clinics effectively as it implements its own quality care, billing, and supply systems.

Additionally, because of the growing trend towards consolidation in specialty and emergency veterinary services markets across the country, as well as the likelihood of future acquisitions by Compassion-First/NVA in these markets, many of which may be non-HSR reportable, the D&O includes (1) a statewide prior approval by the parties in California, Colorado, Virginia, Maryland, and throughout the District of Columbia for acquisitions proximate to existing and future NVA emergency and specialty clinics, and (2) a nationwide prior notice for proposed acquisitions proximate to existing and future Compassion-First/NVA emergency and specialty clinics. These provisions are effective for ten years. UVC and Veritas will also be required to obtain prior approval from the Commission before transferring any of the divested assets to any buyer for a full ten years after UVC and Veritas each acquire the respective divestiture assets, except in the case of a sale of all or substantially all of UVC's or Veritas's businesses.

The Commission will appoint Dr. Michael Cavanaugh, DVM, to act as an independent Monitor to oversee the Respondents' compliance with the requirements of the Order, and to keep the Commission informed about the status of the transfer of the divested clinics to UVC and Veritas. The D&O requires Compassion-First/NVA and Ethos to divest the clinics no later than ten business days after the consummation of the Acquisition.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. It is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Joel Christie,

Acting Secretary.

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